IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

CIVIL REVISION APPLICATION NO. 84 OF 2004

Sudama Jodharam Hanswani ...Petitioner

Versus

Hemant Narayandas Pamnani and Anr. ...Respondents

Mr. M.M. Sathaye for the Petitioner.
Mr. S.S. Kulkarni for Respondent No.1.
Mr. Pankaj Das for Respondent No.2.

CORAM: **DR. D.Y. CHANDRACHUD, J.**
DATE: **DECEMBER 21, 2005**.

P.C.

Rule. Counsel appearing on behalf of the Respondents waive service. By consent, taken up for hearing and final disposal.

2. The suit for specific performance was dismissed by the Trial Court under Order XVII Rule 2 read with Order IX Rule 9 of the Civil Procedure Code, 1908. On 11th December, 2000, the suit was called out but the Plaintiff was absent. The suit was accordingly dismissed for want of prosecution. On an application for restoration having been moved, the learned Civil Judge, Senior Division, Nashik, restored the suit conditional on the payment of costs quantified at Rs.1,500/.

3. The Learned Trial Judge has fairly taken due note of the fact that the suit had been adjourned on several occasions and that on 7th December, 2000, the Plaintiff was informed that the next date of hearing would be 11th December, 2000. The Plaintiff was unable to remain present on the date of the hearing because he was attending the marriage of the son of a close relative. The Plaintiff deposed that his Advocate had called up his residence at 3.00 p.m. but the Plaintiff was away from his residence in connection with the marriage function. The Learned Trial Judge has, in the exercise of his judicial discretion, considered it appropriate to restore the suit subject to the payment of costs quantified at Rs.1,500/-.

4. This Court has to be mindful of the fact that the revisional jurisdiction of the Court has been invoked under Section 115 of the Code of Civil Procedure Code, 1908. Hence, the Court would not exercise that jurisdiction unless one of the grounds set out in Section 115 would be established. In the circumstances, I am of the view that the interference of this Court in the exercise of the discretion of the trial Judge to restore the suit is not warranted. However, having regard to the roznama, which is at Exhibit-B to the present proceedings, and having regard to the findings of the Learned Trial Judge in paragraph 10 of the impugned order,it is clear that the conduct of the first Respondent would not disclose the exercise of diligence in pursuing the proceedings in the suit. In these circumstances, the order for the

payment of cost should, in my view, be modified by directing that the restoration of the suit shall be conditional on the first Respondent paying cost in the amount of Rs.5,000/- to the Applicant instead and in place of the order for payment of costs in the amount of Rs.1,500/- as directed by the Learned Trial Judge. Payment of costs shall be a condition precedent and costs shall be paid within four weeks from today. Costs to be paid in the Trial Court.

5. Since the suit is of 1991, parties shall appear before the Trial Court on 16th January, 2006, for receiving directions in regard to the early disposal of the suit. Parties shall co-operate with the Trial Court in the expeditious disposal of the suit.

6. Rule is made absolute on the aforesaid terms. There shall be no order as to costs.